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MAY 27 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 27, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Amendment of Section 73.202(b),  
FM Table of Allotments  
(Chelan, East Wenatchee and Ephrata, Washington)

Dear Ms. Searcy:

Transmitted herewith on behalf of Hartline Broadcasters is an original and four copies of a petition seeking the institution of a rule making proceeding to allot FM Channel 229C2 to East Wenatchee, Washington. This petition is respectfully directed to the Chief, Allocations Branch.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

  
John F. Garziglia

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 27 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Chelan, East Wenatchee )  
and Ephrata, Washington) )

RM-\_\_\_\_\_

To: Chief, Allocations Branch

**PETITION FOR RULE MAKING**

Hartline Broadcasters, by its attorneys, pursuant to Section 1.401 of the Commission's rules, hereby seeks the institution of a rule making proceeding to amend Section 73.202(b) of the Commission's rules, the FM Table of Allotments, to add Channel 229C2 to East Wenatchee, Washington.<sup>1/</sup> In order to make the addition of Channel 229C2 to East Wenatchee, Washington, it is necessary to delete the vacant upgrade Channel 222C2 at Ephrata, Washington;<sup>2/</sup> to substitute Channel 222C2 for open Channel 230C2 at Ephrata, Washington;<sup>3/</sup> to substitute Channel 238A for Channel 228A at Chelan, Washington with a modification of the operation

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1/ The reference coordinates for Channel 229C2 at East Wenatchee, Washington are 47° 25' 18" North Latitude, 120° 22' 53" West Longitude. This is a site restriction of approximately 6.8 kilometers west of the community of license. See Exhibit No. 1 (Channel Study).

2/ Channel 222C2 had been reserved in 1989 for an upgrade for KULE-FM [formerly KGDN(FM)], Ephrata, Washington.

3/ The reference coordinates for Channel 222C2 at Ephrata, Washington are 47° 19' 00" North Latitude, 119° 29' 20" West Longitude. This is a site restriction of approximately 4.6 kilometers east of the community of license. See Exhibit No. 2 (Channel Study).

of KOZI-FM, Chelan, Washington to specify operation on Channel 238A;<sup>4/</sup> and to correctly reflect the presently licensed channel for KULE-FM, Ephrata, Washington, as Channel 240A.<sup>5/</sup> Thus, it is proposed that the FM Table of Allotments be modified as follows:

	<u>Present</u>	<u>Proposed</u>
Chelan, Washington	228A	238A
East Wenatchee, Washington	249A	229C2, 249A
Ephrata, Washington	222C2, 230C2	222C2, 240A

In support thereof, the following is shown:

1. This petition, which requires substitution of Channel 222C2 for the open and vacant Channel 230C2 allotment at Ephrata, is properly filed pursuant to Section 73.208(a)(3) of the Commission's rules and the policy announced by the Commission in Conflicts Between Applications and Petitions for Rulemaking, MM Docket No. 91-348, 7 FCC Rcd 4918 (1992). A filing window is now open for applicants for Channel 230C2 at Ephrata. See FCC Public Notice, Report No. FM RM-12, Mimeo No. 32796, released April 22, 1993. This filing window closes May 27, 1993. Section 73.208(a)(3) protects applications for new FM stations filed during a filing window from rule making petitions only after the

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<sup>4/</sup> Channel 238A may be substituted for Channel 228A at 47° 51' 07" North Latitude, 119° 52' 18" West Longitude, the present transmitter site coordinates of KOZI-FM. See Exhibit No. 3 (Channel Study). Hartline Broadcasters, if awarded a construction permit for East Wenatchee, Washington, will reimburse the licensee of KOZI-FM for its reasonable and prudent expenses in making the channel substitution. See Circleville, Ohio, 8 FCC 2d 159 (1967).

<sup>5/</sup> The current licensed coordinates for KULE-FM on Channel 240A are 47° 19' 14" North Latitude, 119° 34' 21" West Longitude. See Exhibit No. 4 (Channel Study).

close of the applicable filing window. Pursuant to Section 73.208(a)(3), this petition is acceptable should any Channel 230C2 applications need to be amended due to this proposal to substitute Channel 222C2 for Channel 230C2 at Ephrata, Washington.

2. A grant of this petition will require the deletion of the reservation of upgrade Channel 222C2, Ephrata for KULE-FM [formerly KGDN(FM)], Ephrata, Washington. Ephrata, Washington, MM Docket No. 87-326, 4 FCC Rcd 307 (1989) substituted Channel 222C2 for non-adjacent Channel 240A at Ephrata, Washington, and modified the license of KULE-FM to specify operation on Channel 222C2. Ephrata, Washington contained a condition requiring KULE-FM to file within 90 days of its effective date an FCC Form 301 application specifying facilities on Channel 222C2 at Ephrata. In the four years since the effective date of the allotment of Channel 222C2, no acceptable Form 301 has been filed by KULE-FM.<sup>6/</sup> It is current Commission policy in such cases to delete a vacant allotment to accommodate a proposed new allotment where there is no current interest in retaining the allotment to be deleted. See, e.g. Northport, Alabama and Macon, Mississippi, 8 FCC Rcd 2161 (1993) (vacant allotment deleted to accommodate a proposed new allotment in the absence of expressions of interest or acceptable applications for the vacant allotment); Oakdale and

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<sup>6/</sup> There was an application filed on December 7, 1992 for Channel 222C2 by TRMR, Inc. TRMR, Inc. is not the licensee of KULE-FM. That application was subsequently dismissed by the FM Branch as defective. TRMR filed a petition for reconsideration of the dismissal. The petition for reconsideration was withdrawn on May 26, 1993. See Exhibit No. 5.

Campti, Louisiana, 7 FCC Rcd. 7600 (1992) (vacant allotment deleted to accommodate a proposed new allotment, where interest in the vacant allotment abandoned). Once Channel 222C2 as reserved for the KULE-FM upgrade is deleted, it may be reallocated as a substitution for the vacant<sup>7/</sup> Channel 230C2 at Ephrata, Washington.

3. Since KULE-FM, Ephrata, Washington has not filed a construction permit application to modify its facility to Channel 222C2 which was reserved for it in MM Docket No. 87-326, the FM Table of Allotments should be modified to accurately reflect the operation of KULE-FM on Channel 240A. Alternately, because KULE-FM has failed to apply for, construct and license its upgrade, it should be downgraded on Channel 222C2 to Channel 222A, and then its license should be modified to substitute Channel 240A for Channel 222A. See e.g. Prescott Valley, Arizona, 7 FCC Rcd 3904 (1992) (station not entitled to protection on former channel after grant of upgrade).

4. Accordingly, Hartline Broadcasters respectfully requests that the vacant and unapplied for upgrade allotment reserved for KULE-FM on Channel 222C2, Ephrata, Washington, be deleted; that Channel 240A, Ephrata, Washington, which is the channel on which KULE-FM currently operates, be restored to the FM Table; that the open allotment for Channel 230C2 at Ephrata, Washington, be modified to Channel 222C2; that Channel 238A be substituted for

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<sup>7/</sup> As of this date, no public notices have been released noting the filing of any applications for Channel 230C2 at Ephrata, Washington. A filing window, however, is currently open, as noted above.

Channel 228A at Chelan, Washington, and the license of KOZI-FM, Chelan, be modified to specify operation on Channel 238A; and that Channel 229C2 be allotted to East Wenatchee, Washington.

5. Hartline Broadcasters has a present intention to apply for Channel 229C2 at East Wenatchee, Washington when allotted, and when authorized, to build a station promptly.

WHEREFORE, for the reasons above, it is respectfully requested that a rule making proceeding be commenced looking toward the allotment of Channel 229C2 to East Wenatchee, Washington, and the modification of the Table of Allotments as stated above to enable the new allotment to be made.

Respectfully submitted,

**HARTLINE BROADCASTERS**

By: \_\_\_\_\_

  
John F. Garziglia  
Its Attorney

Pepper & Corazzini  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-0600

May 27, 1993

PEPPER & CORAZZINI  
WASHINGTON D.C. 20006

New Allotment for East Wenatchee, Washington  
Ephrata Allotment to Channel 222C2 and KOZI-FM to Channel 238A

REFERENCE		CLASS C2	DISPLAY DATES
47 25 18 N			DATA 04-29-93
120 22 53 W	Current rules spacings		SEARCH 05-27-93
----- CHANNEL 229 - 93.7 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
ALOPEN	230C2	Ephrata	WA	108.9	68.83	130.0	-61.17 *
KOZIFM	228A	Chelan	WA	38.7	61.29	106.0	-44.71 *
KDRKFM	229C	Spokane	WA	86.2	249.06	249.0	0.06 <
CBTPFM	229B	Penticton	BC	13.2	240.64	237.0	3.64
KMPFSM	231C	Seattle	WA	274.4	120.48	105.0	15.48
KUBE	227C	Seattle	WA	276.0	130.85	105.0	25.85
KPDQFM	229C	Portland	OR	219.6	278.82	249.0	29.82

PEPPER & CORAZZINI  
WASHINGTON D.C. 20006

Modification of Vacant Channel 230C2 Allotment to Channel 222C2  
Deletion of Channel 222C2 Allotment Reserved for KULE-FM

REFERENCE	CLASS C2	DISPLAY DATES
47 19 00 N		DATA 04-29-93
119 29 20 W	Current rules spacings	SEARCH 05-27-93
----- CHANNEL 222 - 92.3 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AP222	222C2	Ephrata	WA	7.6	4.42	190.0	-185.58 *
ALOPEN	222C2	Ephrata	WA	270.0	4.62	190.0	-185.38 *
KLSYFM	223C	Bellevue	WA	276.3	188.77	188.0	0.77 <
AL222	222B	Penticton	BC	357.4	246.25	237.0	9.25
KZHR	223C1	Dayton	WA	145.7	178.66	158.0	20.66
KDNA	220C1	Yakima	WA	221.8	117.55	79.0	38.55
KDNA.A	220C1	Yakima	WA	221.8	117.55	79.0	38.55



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WASHINGTON D.C. 20006

KOZI-FM, Chelan, Washington Modified to Channel 238A

REFERENCE		CLASS A	DISPLAY DATES
47 51 07 N			DATA 04-29-93
119 52 18 W	Current rules spacings		SEARCH 05-27-93
----- CHANNEL 238 - 95.5 MHz -----			

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KLTX	239C	Seattle	WA	258.5	171.29	165.0	6.29
KXLEFM	237C2	Ellensburg	WA	201.9	115.52	106.0	9.52
AL239	239C	Trail	BC	47.8	204.97	195.0	9.97
CBUBFM	237A	Osoyoos	BC	8.9	140.72	113.0	27.72
KULEFM	240A	Ephrata	WA	159.1	63.22	31.0	32.22
KXLEFM	237A	Ellensburg	WA	207.6	106.87	72.0	34.87
KVLR.C	292A	Twisp	WA	340.9	54.88	10.0	44.88
KVLR.A	292A	Twisp	WA	343.0	59.86	10.0	49.86

PEPPER & CORAZZINI  
WASHINGTON D.C. 20006

Table of Allotments Modified to Reflect KULE-FM on Channel 240A

REFERENCE	CLASS A	DISPLAY DATES
47 19 14 N		DATA 04-29-93
119 34 21 W	Current rules spacings	SEARCH 05-27-93
----- CHANNEL 240 - 95.9 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KULEFM	240A	Ephrata	WA	0.0	0.00	115.0	-115.00 *
KNJV.C	242C3	Royal City	WA	178.5	57.12	42.0	15.12
KNLT	239C	Walla Walla	WA	144.1	183.32	165.0	18.32
KNFR	241C	Opportunity	WA	81.6	189.78	165.0	24.78
KXLEFM	237C2	Ellensburg	WA	233.9	81.68	55.0	26.68
KLTX	239C	Seattle	WA	277.4	192.88	165.0	27.88
AL239	239C	Trail	BC	33.5	236.06	195.0	41.06
KXLEFM	237A	Ellensburg	WA	243.8	80.73	31.0	49.73

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May 26, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: TRMR, Inc.  
Channel 222C2, Ephrata, WA  
FCC File No. BPH-920728MC  
Ref. 1800B3-DEB


Dear Ms. Searcy:

On behalf of TRMR, Inc., the purpose of this letter is to withdraw the "Petition For Reconsideration and Reinstatement" filed by TRMR, Inc. with respect to the above-referenced application for a new FM station, and to request that the FM Branch's February 25, 1993 dismissal of the application be left to stand.

TRMR, Inc. filed the referenced application on July 28, 1992. By letter dated February 25, 1993, Ref. 1800B3-DEB, the Chief, FM Branch, of the Commission's Mass Media Bureau, returned TRMR's application as "inadvertently accepted for tender." On March 29, 1993, TRMR, Inc. filed its "Petition For Reconsideration and Reinstatement," which it supplemented on April 28, 1993. To date, the "Petition For Reconsideration and Reinstatement" has not been acted on. TRMR, Inc. has elected not to pursue the subject application further.

The original and four copies of this letter are respectfully submitted. Should any questions arise in connection with this matter, please contact this office directly.

Sincerely,

  
Ellen S. Mandell  
Attorney for TRMR, Inc.


cc: Mr. Dick Canfield  
Mr. Leslie M. Parr

**CERTIFICATE OF SERVICE**

I, Tracey Westbrook, a secretary in the law firm of Pepper & Corazzini, do hereby certify that true copies of the foregoing Petition for Rule Making were sent this 27th day of May, 1993, by first-class United States mail, postage prepaid, to the following:

Basin Street Broadcasting  
KULE-FM Radio  
910 Basin S.W.  
Ephrata, Washington 98823

Northcentral Broadcasting  
KOZI-FM Radio  
123 E. Johnson  
Chelan, Washington 98816

  
\_\_\_\_\_  
Tracey Westbrook